UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/9/Add.9
30 January 1992

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1990

Addendum

ITALY

[30 December 1991]

Introduction

1. On 12 January 1989 Italy ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly at New York on 10 December 1984. On the same date, Italy also deposited its declaration of recognition of the competence of the Committee against Torture established under article 17 of the Convention with regard to both article 21 (controversies between States) and article 22 (communications from individuals).

2. The present initial report is submitted in accordance with the provisions of article 19 of the Convention. It was prepared by the Interministerial Committee for Human Rights attached to the Ministry of Foreign Affairs, in cooperation with the other ministries most directly concerned with the Convention.

GE.92-10444/4314B

I. INFORMATION OF GENERAL NATURE

A. Other international instruments to which Italy is a party

3. Italy has ratified other international instruments which contain provisions on the same subject as the Convention against Torture. The most important among them are the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights.

4. On 26 October 1955 Italy ratified the Convention for the Protection of Human Rights and Fundamental Freedoms drawn up within the framework of the Council of Europe and signed at Rome on 4 November 1950, article 3 of which provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

5. On the basis of the principle set forth in that article and with a view to promoting the disciplined conduct which the article presupposes and establishing detailed rules to govern various aspects of the problem, and also in order to institutionalize specific monitoring and supervision procedures based on visits and access, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was adopted, again within the framework of the Council of Europe, at Strasbourg on 26 November 1987. Italy has ratified that Convention.

6. Italy has also ratified the International Covenant on Civil and Political Rights signed at New York on 19 December 1966, article 7 of which provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 10 of the Covenant provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

7. On 9 December 1975, well before the signature of the Convention against Torture, the General Assembly adopted the Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

B. Adaptation of Italian law to the Convention

8. Adaptation of the Italian legal system to international customary law is automatically and continuously ensured by article 10 of the Constitution, which provides as follows: "The Italian juridical system conforms to the generally recognized principles of international law".

9. The Italian legal system does not, however, include any general provisions concerning adaptation of the internal law to obligations arising under international conventions; in most cases, including that of the Convention against Torture, an "implementation order" is issued. In Italian practice, which also applies to the Convention, such an order is incorporated in the act containing the authorization for ratification of the treaty in question. If, as in the case under consideration, formal adaptation involves the need to introduce amendments to rules forming part of the internal legal system, the order of implementation is issued in the form of an act.

10. The implementation order determines the adaptation of internal law to the standards set forth in the international agreement; the abrogation, modification or introduction of internal standards will, of course, only take effect when the international standard enters into force at the international level. From that moment onward, the Convention's norms have the same force as those directly created by the national legislature, and are equally mandatory. In particular, they must be applied directly by everyone, including Italy's judges. Only in cases where the international norm merely enunciates a general principle or one that is programmatic in character, that is to say where it is not self-executing because it does not incorporate all the elements necessary for its direct application, do internal adaptory provisions have to be adopted so as to make its application possible.

11. In line with the principles described above, article 2 of Act No. 498 of 3 November 1988 authorizing the President of the Republic to ratify the Convention provides as follows: "The Convention shall receive full and complete implementation ... from the date of its entry into force". The same Act also contains certain rules concerning the implementation of the Convention, which are set out in paragraph 55 below.

C. Judicial and administative authorities having jurisdiction over matters dealt with in the Convention

Judicial authorities

12. Under the new Code of Penal Procedure which entered into force on 24 October 1989, ordinary magistrates have jurisdiction over matters dealt with in the Convention. Criminal proceedings are instituted by the victim or ex officio. In accordance with the general principles, the following have jurisdiction depending on the type of matter concerned:

(a) The Criminal Court, in the case of all offences covered by the legal concept of torture and other cruel, inhuman or degrading treatment in the widest sense (see paragraph 36 below);

(b) The Court of Assize, in cases where the perpetration of one of the offences referred to above has caused the death of one or more persons or in cases involving the offence of reduction to slavery;

(c) Appeals from judgements of the Criminal Court may be brought before the Court of Appeal, and from judgements of the Court of Assize before the Appeals Court of the Court of Assize;

(d) Appeals from judgements of the second instance may be brought before the Court of Cassation, which has jurisdiction exclusively with regard to the decision's lawfulness, or, in other words, points of law.

Administrative authorities

13. The administrative authorities which have jurisdiction are those hierarchically above the person accused of having committed an act of torture or other cruel, inhuman or degrading treatment. Measures taken by administrative authorities are usually of a disciplinary nature; should the

elements of a criminal offence be present, the administrative authorities will naturally refer the matter to the judicial authorities, which will proceed accordingly and take the necessary measures.

Jurisdiction of the European Commission and Court of Human Rights

14. The Convention for the Protection of Human Rights and Fundamental Freedoms sets forth and strengthens the principle of judicial protection. Article 13 of the Convention provides that everyone whose rights and freedoms as set forth in the Convention - which includes the explicit prohibition of torture and similar acts - are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

15. Moreover, the rights set forth in the Convention are protected by the international organs established by the Convention itself, namely, the European Commission and Court of Human Rights. Article 25 provides that, besides having any alleged breach of the provisions of the Convention referred to it by any High Contracting Party, the Commission may receive petitions from any person, non-governmental organization or group of individuals.

16. On the basis of a declaration by the State concerned that it recognizes the competence of the European Commission and Court, the Convention recognizes the right of individuals to submit petitions to the Commission. Italy has deposited the appropriate instruments of acceptance of competence. The main conditions of admissibility of petitions are their apparently well-founded nature and the previous exhaustion of all domestic remedies.

17. The Commission takes a decision concerning the individual petition and, should the State fail to comply with the decision, it may refer the matter to the European Court as the organ responsible for ensuring respect of the Convention as well as the protection of the interests of the individual. In its judgement, the European Court may order the State to indemnify the injured party.

II. IMPLEMENTATION OF EACH OF THE ARTICLES OF THE CONVENTION

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

18. As will be shown in greater detail in the comments on article 4, the Italian legal system does not contain any specific law concerning torture and, consequently, there exists no definition of the term "torture". Likewise, the Convention for the Protection of Human Rights and Fundamental Freedoms contains no definition of the terms "torture" and "inhuman or degrading treatment or punishment" prohibited under its article 3. Neither is any reference to the term "torture" to be found anywhere in Italian case-law inasmuch as each judgement relates to specific offences discussed in the comments on article 4.

Article 2

1. Each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

19. It seems worth mentioning that a programme aimed at improving the penitentiary treatment of persons held in custody, along the lines of the general principle set forth in article 2 of the Convention has been in operation in Italy for some considerable time. Article 1 of Act No. 354 of 26 July 1975, which contains rules governing penitentiary establishments and the implementation of measures involving deprivation or limitation of liberty, provides as follows: "Penitentiary treatment must be in conformity with humane sentiments and must ensure respect of the dignity of the person". Article 5 of the Act enunciates the following general principle: "Penal establishments must be designed to receive a restricted number of detainees or prisoners. Prison buildings must provide premises not only for the necessities of individual life but also for communal activities". The Act also contains provisions relating to standards which the detainees' or prisoners' living quarters must meet.

20. A few cases of acts of violence allegedly inflicted upon prisoners in Italy have been reported by Amnesty International. In its last periodic report under the International Covenant on Civil and Political Rights, the Italian Government furnished exhaustive replies with reference to some episodes alleged to have involved acts of violence or ill-treatment. Specific information was also provided concerning reactions to these episodes both on the part of public opinion and in terms of court action brought against the alleged perpetrators. Some sporadic cases of occurrences in the period 1989-1990 reported by Amnesty International have, like the earlier ones, been referred to the courts; these cases are still sub judice and are therefore protected by the law of secrecy.

21. Some extracts from judgements are quoted below by way of example to demonstrate how Italian magistrates, even before the ratification of

the Convention by Italy, applied the principles of the Convention in connection with some cases involving ill-treatment or acts of violence.

(a) In a judgement of 15 July 1983 the Court of Padua found as follows: "The offence of abuse of authority against arrested persons and that of wounding combine to form the multiple offence of intimidation where harsh treatment or striking and wounding are used for the purpose of eliciting from the accused person statements that may be of use in the investigation". The same judgement contains the following statement: "All elements of the offence of abuse of authority against arrested persons, as provided in article 608 of the Penal Code, are present in the fact that some members of NOCS (the central operational security unit), having the power and duty of custody of certain accused persons arrested in flagrante delicto, took one of these accused persons out of the police station where he was lawfully held in custody, placed him in the luggage compartment of a car and drove him to an unknown place where he was beaten and threatened before being returned to the place of lawful detention. In the case in question it was deemed that, under the terms of article 608, any action which restricts the residual liberty of detained persons, even including transfer from the place of detention, constitutes harsh treatment if the purpose of the action renders it unlawful".

(b) In a judgement of 9 May 1978, the Court of Santa Maria Capua Vetere expressed itself in the following terms: "The director and warders of penal mental establishments who, through the indiscriminate use, whether ordered by them or tolerated or at any rate not prevented, of psycholeptic medicines, as well as of a restraining bed, have caused a large number of inmates to suffer restrictions of liberty in the absence of the necessary conditions specified by law, are answerable for the offence of aggravated intimidation".

(c) Attention is drawn to a particularly important judgement of the highest Italian jurisdictional body, the Constitutional Court, dated 12 November 1987. This judgement recalls that the possibility of applying a penalty and of instituting criminal proceedings in a case of striking and wounding committed by a public official where abuse of authority or violation of duty in respect of persons sentenced to restriction of their personal liberty is an aggravating circumstance, cannot be made conditional upon the bringing of a charge by the victim. The judgement states as follows: "Abuse of authority on the part of a public official, consisting in the infliction of unlawful harsh measures upon persons restricted in their personal liberty is ... punished independently from the penalty provided for in article 608 of the Penal Code, in respect of which proceedings are initiated ex officio".

Article 3

1. No State party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relative considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

22. Before outlining the principles introduced by the new Code of Criminal Procedure it may be useful to indicate that, even under administrative rules and practices, the Italian juridical system does not allow the expulsion of a person from Italy to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

23. Article 7, paragraph 10, of Act No. 39 of 28 February 1990 establishing emergency regulations relating to political asylum and entry and sojourn of non-Community citizens and stateless persons already present in Italian territory provides as follows: "In no circumstance shall the expulsion or '*refoulement*' of a foreigner to a State where he may suffer persecution on grounds of race, sex, language, nationality, religion, political opinion or social or personal status, or where he may run the risk of being expelled to a State in which he might not be protected from persecution, be permitted."

24. With particular reference to extradition, attention is drawn to the rules introduced by the new Code of Penal Procedure (Decree of the President of the Republic (DPR) No. 447 of 22 September 1988, which entered into force on 24 October 1989). In particular, article 698 of the Code provides as follows:

"*Political offences. Protection of the fundamental rights of the person.*

1. Extradition may not be ordered either for a political offence or where there are substantial grounds for believing that the accused or convicted person will be subjected to acts of persecution or discrimination on grounds of race, religion, sex, nationality, language, political opinion or personal or social status, that is to say to cruel, inhuman or degrading punishment or treatment or to any acts which constitute a violation of one of the fundamental rights of the person. If the act in respect of which extradition is requested is punishable by death under the law of the foreign State, extradition may be granted only if that State offers guarantees, considered adequate both by the judicial authority and by the Minister of Justice, that sentence of death will not be imposed or, if already imposed, that it will not be carried out".

25. From the report on the preliminary draft of the Code, submitted by the ministerial commission entrusted with drafting the Code in order not only to indicate the fundamental choices made but also to comment on the contents of each provision, it emerges that article 698, which introduces new elements that are a complete departure from the system previously in force, accords an overriding importance to protection of the fundamental rights of the individual. The article strictly prohibits any extradition that may imperil those rights on any one of the grounds listed in the article or that may, as its final effect, entail the execution of the death penalty.

26. Furthermore, with the aim of ensuring that the fundamental rights of the individual are guaranteed, the new system ensures respect of those rights by stipulating that both the political and the judicial authorities must assess them and certify that they are effectively observed.

27. Paragraph 2 of the final draft, incorporates a suggestion made by the parliamentary commission by reiterating the ban on extradition for political offences, which is already prohibited under the last paragraph of article 10 and the last paragraph of article 26 of the Constitution.

28. On the other hand, it was decided not to preclude extradition in the case of offences punishable by death in the requesting State. In that connection, the report states that the text as adopted is in conformity with the case law of the Constitutional Court and respects the principle underlying Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty. Furthermore, it was deemed undesirable to preclude the possibility of cooperation with the requesting State in the case of offences of particular gravity where the Italian State might be obliged to institute legal proceedings under the principle of aut dedere aut judicare.

29. Lastly, it should be noted that the final draft reinforces the measures to verify the adequacy of the guarantees offered by the requesting State by making them subject to assessment by the judicial authorities.

30. It should be noted in any event that even where the Italian Government concludes bilateral extradition agreements, it reserves the right and duty not to issue an extradition order if it has good reason to believe that the person whose extradition is sought will be subjected to treatment or punishment which in any way constitutes a violation of the fundamental rights of the individual. A recent example is the extradition treaty concluded between the Italian Republic and the Federative Republic of Brazil, signed at Rome on 17 October 1989.

31. Even before the entry into force of the new Code of Penal Procedure, the Constitution guaranteed, in the absence of an explicit rule to that effect, that extradition could not be granted in cases where it might be suspected that the accused or convicted person would be subjected to acts constituting a violation of one of the fundamental rights of the individual.

Article 4

> 1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
>
> 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Preamble. The constitutional principle

32. The offence of torture, as such, is not provided for in the Italian system. After Italy's ratification of the International Covenant on Civil and Political Rights and the European Conventions on Human Rights and on Torture, the problem arose at both the parliamentary and the doctrinal levels as to whether it was necessary for the Italian system of criminal law to contain rules relating to torture and specifically to establish the offence of

torture. The issue had to be debated because, as already stated, although torture as such is dealt with and condemned by international instruments, such provisions are lacking in the Italian system.

33. As already mentioned in the introductory part, the conclusions of the debate were essentially that the treaty norms already in existence in this field are directly applicable and it therefore does not appear necessary specifically to establish the offence of torture in Italian law. Long before Italy's ratification of the Convention, Italian law had prohibited and made punishable the commission of all the acts prohibited under the new international instrument.

34. In that context, it will be noted that under the provision contained in article 10 of the Constitution, the principles set forth in the Universal Declaration of Human Rights, most of which had entered customary law, already formed part of the Italian juridical system. Moreover, following the ratification of the European Convention, all the provisions contained therein - which are to a large extent similar to those of the Convention, and even in certain respects more explicit and far-reaching - had been introduced into the Italian juridical system and had been considered directly enforceable.

35. Furthermore, cruel, inhuman or degrading punishment was prohibited under the third paragraph of article 27 of the Constitution, which states that sentences may not consist in treatment contrary to humanity and must tend to promote the rehabilitation of the convicted person.

Criminal law

36. It is therefore considered that acts of torture, as defined in article 1 of the Convention, are already covered adequately in the Italian system of criminal law under distinct categories of offences: striking (art. 581 of the Penal Code), wounding (arts. 582 and 583), intimidation (art. 610), threats (art. 612), sequestration of persons (art. 605), as well as under categories designed to ensure the protection of the citizen against abuse of authority (arts. 606 to 609); furthermore, the commission of the above-mentioned acts with abuse of power represents an aggravating circumstance (art. 61, No. 9). The texts of the most relevant articles of the Penal Code are quoted in full below.

> "Article 606. A public official who makes an arrest in abusing the powers inherent in his duties shall be punished with imprisonment for a period of up to six years.
>
> "Article 607. A public official who, being an officer or employee in a pre-trial detention or penal establishment or in an establishment for the application of security measures ... fails to comply with a release order issued by the competent authority, i.e., who unduly prolongs the term of the penalty or of the security measure, shall be punished with imprisonment for a period of up to three years.
>
> "Article 608. A public official who inflicts harsh measures not permitted by law upon an arrested or detained person in his custody, including temporary custody, or entrusted to him pursuant to a measure

taken by the competent authority, shall be punished with imprisonment for a period of up to 30 months. The same punishment shall be applicable if the act is committed by another public official in whom any authority over the person held in custody is vested for reasons connected with his duties."

37. It should be noted that under article 61 of the Penal Code, acting in abuse of power or in breach of the duties inherent in public office or service when committing an offence is considered to be an aggravating circumstance.

38. The reason why the types of offences referred to above appear to entail such heavy penalties is that they also involve a subjective element - in the form of general wilfulness to harm - and their determination therefore does not require evidence of specific wilful misconduct on the part of the official.

39. A bill currently under consideration in Parliament provides inter alia that in order for the act to be punishable it must have been committed by a public official with the specific aim of obtaining information or for the purpose of retaliation or intimidation.

40. An office has recently been established in the Department of Penitentiary Administration and a magistrate of the Ministry of Justice has been appointed who will act as liaison agent with the Ministry of Foreign Affairs in the matter of the visits to penal establishments provided for under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Relationship between criminal action and disciplinary measures

41. There may be both criminal liability and disciplinary liability for the same act. In such a case, in addition to disciplinary proceedings, criminal proceedings are brought before the ordinary courts against a person alleged to have incurred both types of liability (criminal and disciplinary).

42. Article 3 of the Code of Penal Procedure previously in force required the administrative authorities to submit a report to the Procurator of the Republic if facts coming to light in the course of administrative or disciplinary proceedings were identifiable as offences calling for automatic prosecution. It was further provided that, if criminal proceedings were already in progress, the administrative judge or public authority conducting proceedings at the disciplinary level had to order the suspension of proceedings.

43. Today, however, the new Code of Penal Procedure provides in article 331, paragraph 4, that if a fact identifiable as an offence automatically giving rise to prosecution comes to light in the course of civil or administrative proceedings (no reference is made to disciplinary proceedings), the authority presiding over the proceedings must draw up a charge (and not, as previously, a report) and transmit it without delay to the Government Procurator's Office.

44. In article 106, dealing with measures for implementation of the new Code, it is stated in connection with the procedure for informing the civil or administrative judge who has drawn up the charge that, in the case referred to in article 331, paragraph 4, of the Code, the Government Procurator shall

promptly inform the civil or administrative judge of any application he himself may have made following the conclusion of the preliminary investigation. It will be noted that no reference to disciplinary proceedings is to be found, even in the article on measures for implementation.

45. It should be mentioned, however, that article 117 of the Statute of Civilian State Employees (DPR No. 3 of 10 January 1957) provides for the suspension of disciplinary proceedings during penal proceedings. The article stipulates that, in cases where criminal proceedings are brought, disciplinary proceedings may be instituted only once the criminal proceedings have been concluded and that, if they are already instituted, they must be suspended.

46. Likewise, DPR No. 737 of 25 October 1981 concerning disciplinary measures applicable to police personnel and the procedure to be followed in such cases provides in its article 11 that if both disciplinary and criminal proceedings are brought, in respect of the same acts, against an official employed in the administrative category of the police, the disciplinary proceedings must be suspended until the criminal proceedings are concluded and the matter has become res judicata. These two provisions are still in force and therefore continue to be applied although, as already stated, the new Code of Penal Procedure no longer provides for obligatory suspension of disciplinary proceedings.

47. Criminal proceedings may end in conviction or in acquittal. The laws currently in force establish the principle that dismissal of a State employee upon his conviction of a criminal offence can take place only following disciplinary proceedings, which must in any event be instituted or resumed within 180 days from the date on which the administration learned of the non-revocable conviction of the person concerned and must be concluded within 90 days thereafter. The law further provides that, where the official has been temporarily suspended from duty because of the criminal proceedings against him, the order of suspension shall remain in force, unless rescinded, for a period of at least five years, at the end of which it shall be rescinded de jure.

48. If, however, the criminal proceedings terminate in non-revocable acquittal, article 653 of the new Code of Penal Procedure provides that this decision, given following a debate, shall have the force of res judicata in any disciplinary proceedings before the public authorities in so far as it is based on the finding that the act was not committed or that the accused person did not commit it.

49. If, on the other hand, acquittal is pronounced on any other ground, the administration may continue the proceedings, while maintaining the order of temporary suspension from duty, inasmuch as an act which is penally non-punishable may, nevertheless constitute an administrative breach. Lastly, as far as the relationship between criminal and disciplinary proceedings is concerned, the former must always take precedence over the latter, and facts ascertained in the course of criminal proceedings cannot form the subject of a new investigation but only of renewed consideration from a disciplinary standpoint.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

50. According to the general principles of the Italian system, offences committed in the national territory are generally punished in accordance with Italian law and are subject to the jurisdiction of Italian criminal courts.

51. Under article 7 of the Penal Code, offences committed by public officials in State service acting in abuse of the powers and in violation of the duties inherent in their functions are punishable in accordance with Italian law and, consequently, are subject to Italian jurisdiction. Paragraph 5 of article 7 provides that the general principles of the Italian system are applicable to offences in respect of which the applicability of Italian criminal law is established under international conventions. The provision of paragraph 1 (a) of article 5 of the Convention is therefore fully covered by the legislation in force.

52. With regard to paragraph 1 (b) of article 5, article 9 of the Italian Penal Code provides that a citizen ... who commits, in foreign territory, an offence punishable under Italian law by life imprisonment or by rigorous imprisonment for a minimum of three years shall be punished in accordance with Italian law provided he is present in Italian territory. If, however, the penalty for the offence committed is less than three years, the offender shall be punished upon application by the Minister of Justice or upon a request or charge brought by the victim. Should the offence have been committed to the detriment of a foreigner, the offender shall be punished upon application by the Minister of Justice in so far as extradition has not been granted or has not been accepted by the Government of the State in which the offence was committed.

53. The provision in paragraph 1 (c) of article 5 of the Convention has its exact counterpart in the principle to be found in article 10 of the Penal Code. That article provides that, when a foreigner commits, in foreign

territory, to the detriment of ... a citizen, an offence for which Italian law stipulates life imprisonment or at least one year of rigorous imprisonment, he shall be punished in accordance with Italian law, provided he is present in Italian territory and that an application to that effect is made by the Minister of Justice or a request or charge is brought by the victim. If the offence is committed by a foreigner, in foreign territory, to the detriment of another foreigner, the offender shall be punished in accordance with Italian law, upon application by the Minister of Justice, subject to the verification of the following three circumstances:

(a) That the foreigner who has committed the offence is present in Italian territory;

(b) That the offence is one the penalty for which is life imprisonment or rigorous imprisonment for a minimum of three years; and

(c) That extradition of the offender has not been granted, or has not been accepted by the State in which the offence was committed or by the State of which he is a national.

54. The foregoing legal provisions also cover, in part, the obligation laid down in article 5, paragraph 2, of the Convention. They are supplemented by the provision set forth in article 3 of the Act of ratification (see para. 55 below).

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

55. In order to ensure a closer adaptation of Italian law to the obligations assumed by Italy under articles 6 and 7 of the Convention, the Act of Ratification (Act No. 498 of 3 November 1988, previously cited) introduces in article 3 the following additional provisions concerning the scope of Italy's jurisidiction:

"The following shall be punished in accordance with Italian law, upon application by the Minister of Justice:

(a) An Italian citizen who, in foreign territory, commits an act which constitutes an offence defined as an act of torture in article 1 of the Convention;

(b) A foreign national who, in foreign territory, commits any act as referred to in subparagraph (a) to the detriment of an Italian citizen;

(c) A foreign national who, in foreign territory, commits any act as referred to in subparagraph (a), if he is present in Italian territory and if his extradition has not been ordered."

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

56. There exist a considerable number of normative texts of an essentially regulatory nature indicating the conduct to be adopted by all those who are responsible, in whatsoever capacity and by reason of their functions, for persons arrested or detained in any circumstances. These regulations were introduced, inter alia, with a view to ensuring the full and complete implementation of the provisions of the European human rights Convention.

57. In so far as State police personnel are concerned, the Department of Public Security is responsible for the immediate implementation of the principles contained in article 10 of the Convention. This emerges from all the provisions set forth in many circulars, even those pre-dating the Convention, as well as from the contents of a handbook which the Central Directorate of Training Establishments issues to police personnel and which concerns professional ethics, respect of human rights, and public relations (for extracts from the handbook see the annex to the present report).

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subject to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

58. With regard to matters relating to prison administration, attention is drawn to the special features of the Italian model, which may have been the last to arrive at a definition of "penitentiary treatment" in the light of other countries' experience.

59. The significant aspect of Italy's own experience is that even when faced with serious problems, some of which it shared with other European countries (terrorism, social conflicts) while others are specific to Italy, a country where a highly innovative legislation has been superimposed on old and inadequate structures, both the State and the prison service have risen to the challenge by examining new initiatives aimed at the full attainment of the prison system's goals.

60. In line with the previously cited passage in article 27 of the Constitution ("Sentences may not consist in treatment contrary to humanity and must tend to promote the rehabilitation of the convicted person"), the law on reform of the prison system (Act No. 354 of 26 July 1975) provides in its article 1 as follows: "Convicted persons and prisoners must be given rehabilitation treatment aimed at the social reintegration of the persons concerned, inter alia, through contacts with the outside world."

61. Even in the Standard Minimum Rules adopted by the United Nations and the Council of Europe, the term "treatment" has two different meanings: "manner of treating", which refers to the detainee's daily life and his basic and secondary needs; and "rehabilitation", no exhaustive definition of which is to be found in Italian legislation.

62. It is pointed out, however, that in the "Italian model", the work of rehabilitation requires the convicted person's acceptance and cooperation; the approach is therefore never of the medical type, nor is it ever treatment involving compulsion.

63. Furthermore, the jurisdictional activities of the Surveillance Sections, whose teams are present in practically all Italian prison establishments, consist, inter alia, in considering the possibility, in each case, of replacing detention by alternative measures. Extending the activities of multi-disciplinary teams to observe the personality of each prison inmate and to propose intramural treatment programmes has been among the administration's priority objectives.

64. A field survey has shown that observation and treatment teams are operating in 95 per cent of prison establishments and district custodial facilities incorporating security wings; in 84 per cent of cases, the work of such teams has extended to individuals serving long terms of imprisonment.

65. It should also be noted that a bill introduced in Parliament during the current session of the legislature (see annex) seeks to introduce, in connection with procedures for the transfer of detainees, rules designed to protect the individual in such circumstances from the curiosity of the public and from publicity of any kind; in order to reduce the unpleasantness generally involved in such transfers, the bill would, inter alia, permit the use of handcuffs only where the prisoner is genuinely dangerous or where there is a risk of escape, the use of all other means of constraint being prohibited.

66. Article 474 of the Code of Penal Procedure provides that "the defendant shall be physically free when attending the hearing, even if he is a detained person, except in cases where precautions may be necessary to avert the risk of escape or of violence". This rule is very much the same as that set forth in article 427 of the previous Code.

67. Italy applies the international guarantees provided, in particular, under the European Convention, which established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Committee is empowered to carry out visits to examine the treatment of persons deprived of their liberty and to strengthen their protection where necessary. Each State Party to the Convention is required to permit such visits, and members of the Committee may interview in private persons deprived of their liberty. After each visit, the Committee draws up a report on the facts found during the visit, including in the report any recommendations it considers necessary.

68. If the State party fails to cooperate or refuses to improve the situation of detainees in the light of the recommendations of the Committee, the latter may decide to make its views publicly known. Attention is drawn to the fact that members of the Committee enjoy special privileges and immunities in the exercise of their functions, including travel relating thereto.

69. The situation with regard to prison establishments resulting from the implementation of Act No. 354 of 26 July 1975, previously cited, is illustrated in the statistical table annexed to the present report, which shows the number of detainees and prisoners in Italian pre-trial detention and prison establishments. The table allows a comparison to be drawn between the situations which existed in March 1991 and in March 1990, respectively.

70. As for health supervision, circular No. 2931/5381 of the Ministry of Justice contains provisions concerning the duties and powers of the physician in charge of medical services in prisons and pre-trial detention centres (a copy of the circular is annexed to the present report).

71. Circular No. 3297/5747 of the Ministry of Justice contains provisions concerning protection of the life and health of detainees and prisoners in the light of the recent alarming spread of AIDS. The circular provides that any detainees or prisoners demonstrably suffering from AIDS must be hospitalized in external medical establishments and instructs officials in charge of prison establishments to act accordingly. (For a copy of the circular see the annex to the present report.)

72. Furthermore, the prison system attaches particular importance to the initial medical examination upon admission, which is conducted with great care with a view to the early detection of any disease of which the new detainee may be a carrier and also, to arranging for suitable therapeutic treatment where necessary.

73. In this connection, attention is drawn to a Ministry of Health Decree of 12 July 1990 laying down the diagnostic procedures to be applied in ascertaining habitual use of narcotic drugs or psychotropic substances. The physician conducting the medical examination upon first admission must take account of the Decree's provisions in reaching conclusions as to the detainee's possible state of drug dependence and, in the case of new detainees, must complete a form containing the relevant medical information.

74. Moreover, on 6 February 1990 the Consultative Commission of the Ministry of Health responsible for liaison with regions and local communities approved a set of guidelines and directives concerning medical assistance in prison establishments. This document, which contains a number of detailed and innovative proposals, proceeds from the principle that "the right to health must be guaranteed equally to all persons, whether at liberty or in detention or sentenced to a term of deprivation of personal liberty, in conformity with article 32 of the Constitution. The exercise of this right is of particular importance within the prison framework in view of the increased danger to health that is involved".

75. Lastly, it should be recalled that while the State has exclusive jurisdiction in criminal affairs and penal matters, the regions, on the basis of their powers in the social welfare sector, take an active part in the protection of socially and economically disadvantaged categories of citizens who may require assistance in claiming their rights, including those deriving from the Convention.

Article 12

> Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

76. Criminal proceedings are mandatory. Under the general principles of the Italian system of criminal procedure, the Government Procurator's Office, as the organ which sets the proceedings in motion, and the judicial police, to the extent that it is controlled by that Office, must on their own initiative take cognizance of offences and receive information relating thereto submitted or transmitted by public officials, persons responsible for a public service, or private individuals (art. 330 of the Penal Code). More specifically, public officials and persons responsible for a public service who, in the exercise or because of their functions or service, have cognizance of a breach of the law giving rise automatically to prosecution, must report that breach in writing, even where the person to whom the breach is attributed has not been identified (art. 331).

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

77. Under article 333 of the Code of Penal Procedure, any person having knowledge of an offence giving rise automatically to prosecution may bring a charge in connection with the offence. The charge is submitted orally or in writing and personally or through a specially appointed representative to the Government Procurator's Office or to an officer of the judicial police.

78. In the case of an offence not giving rise automatically to prosecution, the victim may lodge a complaint expressing the wish that proceedings should be instituted in respect of an act deemed to be a breach of the law (art. 336).

79. As to involvement in the proceedings of private parties other than the accused, the new Code adopts the policy of separating as far as possible civil from criminal proceedings for the obvious purpose of "simplifying the proceedings as much as possible", without, however, sacrificing the rights of the parties. The advantages of this approach from the point of view of functional efficiency are indisputable.

80. Conversely, unprecedented importance is paid to the victim of the offence under the new Code, which, in chapter VI, volume I, includes the victim among the fully entitled participants in the proceedings. The victim can bring evidence and submit statements at all stages and levels of the proceedings. He also has the right to participate in technical verifications of a non-repeatable nature that are decided upon by the Government Procurator's Office (art. 360); to request that Office to arrange a probatory proceeding (art. 394); to attend such a proceeding (art. 398); to intervene in connection with a request for extension of the time-limit for the investigation (art. 406); to object to a request that certain evidence be consigned to the archives (arts. 408 to 410); and to request the Procurator-General to order the calling up of the results of the investigation (art. 413).

81. The rights attributed in the proceedings to the victim of the offence who is not a claimant for criminal indemnification are likewise attributed, subject to the equitable discretion of the judge, to bodies and associations recognized to be constituted for the purpose of protecting interests infringed by the offence.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which exist under national law.

82. Italian law does not provide any general system of State compensation of victims; at present this form of public compensation is confined to exceptional cases (victims of duty, victims of terrorist acts) which are few and far between. Compensation of victims of violence is not provided for as a general rule. Italy has not yet signed the European Convention on the Compensation of Victims of Violent Crimes.

83. Article 185 of the Penal Code provides for compensation for material and non-material damage by the person found guilty of the offence or by persons responsible for his acts under civil law. The article provides that the victim of an act of torture is entitled to compensation by the person found guilty of the offence.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

84. Article 188 of the new Code of Penal Procedure, which deals with the moral freedom of the individual while giving evidence, provides as follows: "No use may be made, even with the consent of the person concerned, of methods or techniques designed to influence the freedom of self-determination or to affect the ability to recollect and evaluate facts". The article ensures, with regard to all possible action by authorities, respect of the moral freedom of the citizen in the face of means of coercion employed against his will or of covert persuasion techniques. Article 191 of the Code of Penal Procedure provides, in particular, that: (1) evidence obtained in violation of prohibitions established by law may not be used; (2) the non-useable nature of such evidence may be pleaded, where necessary ex officio, at any stage and any level of the proceedings.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiesence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

85. The comments in paragraph 36 above are equally applicable to the provisions of article 16 of the Convention. Reference is made also to the cultural, social and political debate taking place, as well as the diverse parliamentary bills submitted during the current session of the legislature, concerning abbrogation of the provisions concerning the death penalty contained in the Military Penal Code on the basis of the conviction that the trend towards humanization of penalties must eventually lead to the complete abolition of the death penalty. It has been proposed that these parliamentary bills, which were considered on 24 April 1991 by the Parliamentary Commission on Justice, should be given legislative approval without a vote in the National Assembly.

86. The death penalty provided for in the Penal Code (Decree No. 1398 of 19 October 1930), article 21, was abolished (and replaced by life imprisonment) by Decree No. 224 of 10 August 1944 and Decree No. 21 of 22 January 1948.

Annex* 1

1. Department of Public Security - Central Directorate of Training Establishments: handbook concerning professional ethics, respect for human rights, and public relations (extracts).

2. Parliamentary Bill of 16 July 1987 concerning the procedure to be used in the transfer of detainees.

3. Statistical table concerning detainees and prisoners in preventive detention and penal establishments.

4. Circular No. 2931/5381 on the duties and powers of the physician in charge of medical services at detention centres and penal establishments.

5. Circular No. 3297/5747 concerning detainees suffering from AIDS.

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* The documents listed in the annex were received in the Italian language from the Government of Italy and may be consulted in the archives of the United Nations Centre for Human Rights.